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23 CORPORATION

24  
25 **UNITED STATES DISTRICT COURT**  
26  
27 **SOUTHERN DISTRICT OF CALIFORNIA**

28 JENIFER WILLIAMS, an  
1 individual, on behalf of herself, and  
2 on behalf of all persons similarly  
3 situated,

4 Plaintiff,

5 vs.

6 LOCKHEED MARTIN  
7 CORPORATION, a Maryland  
8 Corporation, and Does 1 to 10,

9 Defendants.

10 Case No. **09cv01669-WQH-MDD**

11 **JOINT MOTION FOR APPROVAL**  
12 **OF PENALTIES SOUGHT IN**  
13 **PROPOSED SETTLEMENT OF**  
14 **PLAINTIFF JENIFER WILLIAMS'S**  
15 **CLAIM UNDER THE CALIFORNIA**  
16 **PRIVATE ATTORNEYS GENERAL**  
17 **ACT**

18 Judge: William Q. Hayes  
19 Courtroom: 4

20 **NO ORAL ARGUMENT UNLESS**  
21 **REQUESTED BY THE COURT**

1     **I. INTRODUCTION**

2         Plaintiff Jenifer Williams (“Plaintiff”) and Defendant Lockheed Martin  
 3 Corporation (“Defendant”) jointly seek this Court’s approval of the penalties sought  
 4 as part of the parties’ proposed settlement of Plaintiff’s claim under the California  
 5 Private Attorneys General Act (“PAGA”), Labor Code § 2699 *et seq.*

6     **II. RELEVANT PROCEDURAL BACKGROUND**

7         On July 31, 2009, Plaintiff filed the instant action. The Complaint alleged  
 8 that Plaintiff and other individuals holding the Network Data Communications  
 9 Analyst, Network Data Communications Analyst Senior, and Systems  
 10 Administrator job codes in California had been improperly classified as exempt and  
 11 unlawfully denied overtime pay. Plaintiff also included claims for failure to  
 12 provide meal and rest breaks, failure to provide accurate itemized wage statements,  
 13 and for unfair competition in violation of California Business & Professions Code §  
 14 17200 *et seq.*

15         On November 19, 2009, Plaintiff filed a Second Amended Complaint which  
 16 added a cause of action under PAGA, based on the alleged Labor Code violations  
 17 described in the Complaint. Plaintiff asserted her PAGA cause of action in a  
 18 private attorney general capacity on behalf of other individuals holding the above-  
 19 referenced job codes during the relevant limitations period.<sup>1</sup>

20         On October 29, 2010, Plaintiff filed a motion for class certification seeking  
 21 certification of her claims for failure to pay overtime, failure to provide meal and  
 22 rest breaks, failure to provide accurate itemized wage statements, and unfair  
 23 competition. Plaintiff did not attempt to certify her representative PAGA claim,  
 24 based on authority that a PAGA claim does not need to meet class certification  
 25 standards.

26         <sup>1</sup> On August 21, 2009, as required by Labor Code § 2699 *et seq.*, Plaintiff provided  
 27 the California Labor and Workforce Development Agency (“LWDA”) with written  
 28 notice of her intent to assert a claim under PAGA and the basis for that claim.  
 Plaintiff subsequently received notice from the LWDA that she was authorized to  
 proceed with her claim under PAGA.

1           On June 1, 2011, this Court denied Plaintiff's motion for class certification,  
 2 concluding that class treatment was not appropriate "because common questions of  
 3 law or facts do not predominate over questions affecting the individual members of  
 4 the proposed class." Dkt No. 92.

5           **III. THE PARTIES HAVE SETTLED PLAINTIFF'S PAGA CLAIM**

6           With the denial of Plaintiff's motion for class certification, the only  
 7 remaining claims are Plaintiff's individual claims and the representative PAGA  
 8 claim. The parties have agreed to settle those claims in their entirety. In particular,  
 9 the parties have agreed to settle Plaintiff's representative PAGA claim for  
 10 \$25,000.00 in civil penalties (the "PAGA Payment"),<sup>2</sup> 75% of which will be paid to  
 11 the LWDA, and 25% of which will be distributed equally to Plaintiff and  
 12 approximately 60 "PAGA Settlement Employees."<sup>3</sup> (Declaration of Norman  
 13 Blumenthal, at ¶ 7.) The settlement is intended to fully and finally resolve the  
 14 PAGA claim asserted by Plaintiff as to Plaintiff and the PAGA Settlement  
 15 Employees.<sup>4</sup>

16           No later than fourteen days after the Court approves the PAGA Payment,  
 17

18           <sup>2</sup> Labor Code § 2699(i) provides in relevant part, "civil penalties recovered by  
 19 aggrieved employees shall be distributed as follows: 75 percent to the Labor and  
 20 Workforce Development Agency for enforcement of labor laws and education of  
 21 employers and employees about their rights and responsibilities under this code, to  
 22 be continuously appropriated to supplement and not supplant the funding to the  
 23 agency for those purposes; and 25 percent to the aggrieved employees."

24           <sup>3</sup> The "PAGA Settlement Employees" consist of the individuals who submitted  
 25 declarations in support of Plaintiff's motion for class certification, as well as any  
 26 other individuals (excluding Plaintiff) who held the Network Data Communications  
 27 Analyst, Network Data Communications Analyst Senior, and/or Systems  
 28 Administrator job codes in California since November 19, 2008, excluding  
 individuals who worked on a federal enclave and/or who entered into a prior release  
 of claims with Lockheed Martin for consideration that covered the PAGA claims at  
 issue in the Second Amended Complaint. (Declaration of Norman Blumenthal, at ¶  
 7.)

29           <sup>4</sup> Through the confidential settlement, the parties have also agreed that Lockheed  
 30 Martin will offer an additional payment to the PAGA Settlement Employees who  
 31 sign individual releases of the non-PAGA claims that were or could have been  
 32 asserted on their behalf in the instant action. In addition, the parties have agreed to  
 33 fully and finally resolve Plaintiff's individual claims, as well as her attorneys' fees  
 34 and costs for a negotiated amount representing less than half of the fees and costs  
 35 incurred by her attorneys in this matter. (Declaration of Norman Blumenthal, ¶ 8.)

1 Plaintiff will file a Joint Stipulation of Dismissal pursuant to Federal Rule of Civil  
 2 Procedure 41(a)(1)(A)(ii) dismissing all claims asserted against Lockheed Martin.

3 **IV. THE PARTIES REQUEST APPROVAL OF THE SETTLEMENT OF**  
 4 **THE PAGA CLAIM**

5 Labor Code § 2699(l) requires that the Court “review and approve any  
 6 [PAGA] penalties sought as part of a proposed settlement agreement.”  
 7 Consequently, the parties respectfully ask the Court to approve the \$25,000 PAGA  
 8 Payment to be paid as part of the proposed settlement.

9 **A. The PAGA Payment Is Fair and Reasonable**

10 The parties believe that the \$25,000 PAGA Payment is fair and reasonable  
 11 and therefore should be approved.

12 In order to recover any PAGA penalties, Plaintiff would be required at trial to  
 13 prove each of the underlying Labor Code violations. *See Cardenas v. McLane*  
 14 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, \*10 (C.D. Cal. Jan. 31, 2011)  
 15 (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of  
 16 individuals whom the plaintiff has not proven suffered a violation of the Labor  
 17 Code by the defendant.”). Here, Plaintiff would need to prove as to each Network  
 18 Data Communications Analyst, Network Data Communications Analyst Senior,  
 19 and Systems Administrator that he or she was misclassified as exempt. Plaintiff  
 20 would additionally need to prove as to each that Lockheed Martin did not provide  
 21 him or her meal breaks or accurate wage statements, among other penalties at issue  
 22 that would require proof of a Labor Code violation.

23 Lockheed Martin maintains that Plaintiff and the PAGA Settlement  
 24 Employees were properly classified as exempt, and that it did not violate the Labor  
 25 Code as to any of them. As set forth in Lockheed Martin’s Opposition to Plaintiff’s  
 26 Motion for Class Certification, the employees at issue could have qualified for one  
 27 or more of three possible exemptions. Lockheed Martin also presented evidence  
 28 that various PAGA Settlement Employees were provided a reasonable opportunity

1 to take, and in fact took, available meal periods.

2        Given Defendant's potential defenses to the claimed Labor Code violations at  
 3 issue, and the risks and costs of continued litigation, Plaintiff and her attorneys  
 4 believe that the \$25,000 PAGA Payment is fair, reasonable, and in the best interest  
 5 of the PAGA Settlement Employees. (Declaration of Norman Blumenthal, at ¶ 9)  
 6 The PAGA Payment, along with the other terms of the proposed settlement, were  
 7 negotiated by experienced counsel at arm's length before a private mediator, as well  
 8 as prior negotiations before Magistrate Judge Dembin. (*Id.*)

9        In this regard, the amount of the PAGA Payment exceeds amounts that have  
 10 been approved by district courts in other cases. For instance, in *Franco v. Ruiz*  
 11 *Food Products, Inc.*, 2012 WL 5941801 (E.D. Cal. Nov. 27, 2012), the court  
 12 approved a total PAGA penalty amount of \$10,000, with the \$2,500 employee  
 13 portion divided between as many as 2,055 current and former employees. In  
 14 *Schiller v. David's Bridal, Inc.*, 2012 WL 217001 (E.D. Cal. June 11, 2012), the  
 15 court also approved a PAGA penalty amount of \$10,000, with the \$2,500 employee  
 16 portion divided between as many as 3,326 individuals. Here, the parties have  
 17 agreed to a PAGA Payment of \$25,000, with the \$7,500 employee portion to be  
 18 divided between approximately 60 current and former employees.

19        **B. The Remaining Settlement Terms Do Not Require Court Approval**

20        Although PAGA requires that a court approve the penalties that are sought as  
 21 part of a proposed settlement, Labor Code § 2699(1) does not require that a court  
 22 approve any other elements of the proposed settlement, including attorneys' fees  
 23 and costs. Similarly, because this Court previously denied Plaintiff's Motion for  
 24 Class Certification, the settlement approval provisions of Federal Rule of Civil  
 25 Procedure 23(e) do not apply. Accordingly, the Court only needs to approve the  
 26 penalties sought in the PAGA Payment.

27        ////

28        ////

## V. CONCLUSION

Based on the foregoing, the parties respectfully request that based on its review, this Court approve the PAGA Payment sought as part of the proposed settlement.

Dated: February 14, 2013

# BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ *Norman B. Blumenthal*

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Norman B. Blumenthal  
Attorneys for Plaintiff

Dated: February 14, 2013

## MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Alexander M. Chemers

Alexander M. Chemers  
Attorneys for Defendant

## **SIGNATURE CERTIFICATION**

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Alexander M. Chemers, counsel for Defendant LOCKHEED MARTIN CORPORATION, and that I have obtained Mr. Chemers's authorization to affix his electronic signature to this document.

Dated: February 14, 2013

# BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal

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Norman B. Blumenthal

Attorneys for Plaintiff